

E-filed: 10/15/09

1 HAROLD P. GEWERTER, ESQ.
Nevada Bar No. 499
2 HAROLD P. GEWERTER, ESQ., LTD.
5440 West Sahara Avenue, Third Floor
3 Las Vegas, Nevada 89146
Telephone: (702) 382-1714
4 Facsimile: (702) 382-1759

5 C. STANLEY HUNTERTON, ESQ.
Nevada Bar No. 1891
6 PAMELA R. LAWSON, ESQ.
Nevada Bar No. 5044
7 HUNTERTON & ASSOCIATES
333 South Sixth Street
8 Las Vegas, Nevada 89101
Telephone: (702) 388-0098
9 Attorneys for Phase II Chin, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

14 PHASE II CHIN, LLC and LOVE &
15 MONEY, LLC, formerly O.P.M.L.V.,
LLC,

Plaintiffs,

v.

18 FORUM SHOPS, LLC, FORUM
DEVELOPERS LIMITED
19 PARTNERSHIP, SIMON PROPERTY
GROUP LIMITED PARTNERSHIP,
20 SIMON PROPERTY GROUP, INC.,
CAESARS PALACE CORP, CAESARS
21 PALACE REALTY CORP., DOES 1
through 20, AND ROE CORPORATIONS
22 1 through 20,

Defendants.

Case No. 2:08-cv-00162-JCM-GWF

25 **PLAINTIFFS' JOINT MOTION TO FILE A REPLY TO SUPPLEMENTAL**
26 **MEMORANDUM BY DEFENDANTS FORUM SHOPS, LLC, FORUM DEVELOPERS**
27 **LIMITED PARTNERSHIP, SIMON PROPERTY GROUP LIMITED PARTNERSHIP,**
28 **SIMON PROPERTY GROUP, INC. IN SUPPORT OF MOTION TO DISMISS**

1 Plaintiffs Phase II Chin, LLC (“Chinois”) and Love & Money, LLC (formerly
2 O.P.M.L.V., LLC) respectfully move this Court for an order permitting them to file a Reply to
3 the Supplemental Memorandum filed by Defendants Forum Shops, LLC, Forum Developers
4 Limited Partnership, Simon Property Group Limited Partnership, and Simon Property Group,
5 Inc. (the “Forum Defendants”) on September 24, 2008. This motion is based on LR 7-2, the
6 Court’s inherent authority to control its own docket and proceedings, the pleadings and
7 documents on file and the memorandum of points and authorities that follows.

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 Local Rule 7.2 addresses motions. While this rule does not specifically provide for the
10 filing of replies to supplemental briefs, the Court unarguably has the inherent authority to grant
11 leave to file such briefs. *See, e.g., Reva Int’l, Inc. v. MBraun, Inc.*, 2007 U.S. Dist. LEXIS 94821,
12 *20 n. 4 (D. Nev. December 28, 2007) (“Reva could have sought leave to file a sur-reply.”)
13 Leave to file a further reply should be granted where it would not prejudice any party and where
14 the brief would aid in the decisional process. *See Audi AG v. D’Amato*, 2007 U.S. Dist. LEXIS
15 16863, *4 (E.D. Mich. January 3, 2007).

16 In their Supplemental Memorandum, the Forum Defendants, for the first time, claim that
17 Plaintiffs’ causes of action for interference with contractual relations, interference with
18 prospective business advantage, injunctive relief, violation of 42 U.S.C. § 1981 and conspiracy
19 are barred by the litigation privilege. As Plaintiffs indicated in their Opposition to the Forum
20 Defendants’ request for leave to file the Supplemental Memorandum, due process requires that
21 Plaintiffs be permitted the opportunity to respond to the Forum Defendants’ new argument.
22 Plaintiffs’ response is more efficiently presented to the Court in a short written submission than
23 at oral argument, so Plaintiffs’ Reply to the Supplemental Memorandum will aid the Court in the
24 decisional process. Moreover, granting this motion will not prejudice the Forum Defendants, as
25 they will have the opportunity to review this brief prior to the hearing on the Motions and may
26 address it at the hearing.

27 CONCLUSION

28 For the reasons stated above, Plaintiffs respectfully request that the Court grant their

1 request to file the Reply to the Forum Defendants' Supplemental Memorandum submitted
2 concurrently with this motion. A proposed order has also been submitted concurrently herewith.

3
4 Dated: October 16, 2008

HAROLD P. GEWERTER, ESQ., LTD.

5
6 /s/ Harold P. Gewerter, Esq.

HAROLD P. GEWERTER, ESQ.

Nevada Bar No. 499

5440 West Sahara Avenue, Third Floor

Las Vegas, Nevada 89146

Attorney for Plaintiffs

7
8
9 Dated: October 15, 2008

FAGELBAUM & HELLER LLP

10
11 /s/ Philip Heller, Esq.

Philip Heller, Esq.

2049 Century Park East, Suite 4250

Los Angeles, CA 90067-3254

Counsel for Phase II Chin, LLC

12
13
14 71039\3001\621181.1